INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and documents involved	2
Statement	3
Interest of the United States	5
Summary of Argument	5
Argument	9
I. The phrase "possessions of the United States" of Section 3(c) of the Fair Labor Standards Act is used in its ordinary sense and not in a sense peculiar to that Act	11
A. The legislative history of the Act indicates that "possession of the United States" was used in its ordinary sense	12
B. The Administrator of the Wage and Hour Division has interpreted "territory or possession of the United States" as having its ordinary meaning	14
II. The Bermuda bases are not possessions of the United States	18
A. The leasing of the bases does not involve the transfer of sovereignty essential to these areas becoming possessions of the United States	18
1. Right of sovereignty over area is essential to area's being "possession of the United States"	18
(i) The possessions generally	18
(ii) Guantanamo Naval Base	22
2. No transfer of sovereignty is involved in the leasing of the Bermuda bases	25
(i) The negotiations	26
(ii) The leases and the agreement	28
B. The Executive Department has determined that the Bermuda base is not a possession of the United States	33
C. Congress likewise has not regarded the leased areas as possessions of the United States	38
III. The Fair Labor Standards Act does not cover employees engaged in "commerce" outside the United States, its Territories and possessions	40
Conclusion	48

Page

Appendix A: State Department letter 49
Appendix B: Wage and Hour Division letters 55

CITATIONS

Cases:

Addison v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607 46
American Banana Company v. *United Fruit Company*, 213 U. S. 347 42
Balzac v. *Porto Rico*, 258 U. S. 298 10
Bernhard v. *Metcalfe Const. Co.*, 64 F. Supp. 953 41
Blackmer v. *United States*, 284 U. S. 421 42
Blain, Ex parte, 12 Ch. Div. 522 (1879) 42
Burns v. *Metcalfe Const. Co.*, 69 F. Supp. 381 41
Chatwin v. *United States*, 326 U. S. 455 43
Cincinnati Soap Co. v. *United States*, 301 U. S. 308 21
Crowe v. *Elmhurst Contracting Co.*, 74 N.Y.S. (2d) 445, affirmed, 79 N.Y.S. (2d) 876 10
Delassus v. *United States*, 9 Pet. 117 18
DeLima v. *Bidwell*, 182 U. S. 1 10
Domenech v. *National City Bank*, 294 U. S. 199 21
Dooley v. *United States*, 182 U. S. 222 10
Downes v. *Bidwell*, 182 U. S. 244 10
Eckert v. *Elmhurst Contracting Co.*, 185 Misc. 108, affirmed, 186 Misc. 100 10
Filardo v. *Foley Bros., Inc.*, 181 Misc. 136 41
Fourteen Diamond Rings v. *United States*, 183 U. S. 176 20
Galban & Co. v. *United States*, 40 C. Cls. 495, affirmed *per curiam*, 207 U. S. 579 ..... 20, 21
Hawaii v. *Mankichi*, 190 U. S. 197 19
Hilton v. *Sullivan*, 334 U. S. 323 46
Holy Trinity Church v. *United States*, 143 U. S. 457 43
Hooven & Allison Co. v. *Evatt*, 324 U. S. 652 ..... 21, 47
Jones v. *United States*, 137 U. S. 202 33
Kirschbaum Co. v. *Walling*, 316 U. S. 517 45
Luckenbach S. S. Co. v. *United States*, 280 U. S. 173 19
McLeod v. *Threlkeld*, 319 U. S. 491 45
Neely v. *Henkel*, 180 U. S. 109 20
Pearcy v. *Stranahan*, 205 U. S. 257 33
Posadas v. *National City Bank*, 296 U. S. 497 20
Puerto Rico v. *Shell Co.*, 302 U. S. 253 10
Rassmussen v. *United States*, 197 U. S. 516 20
Smith v. *Townsend*, 148 U. S. 490 43
State v. *Carter*, 27 N. J. (3 Dutcher) 499 42
Strother v. *Lucas*, 12 Pet. 410 18
10 E. 40th St. Co. v. *Callus*, 325 U. S. 578 45
United States v. *Carbone*, 327 U. S. 633 43
United States v. *Curtiss-Wright Corp.*, 299 U. S. 304 ..... 33, 42
United States v. *Flores*, 289 U. S. 137 42

Cases—Continued

	Page
United States v. *Percheman*, 7 Pet. 51	19
Walling v. *Jacksonville Paper Co.*, 317 U. S. 564	45
Williams v. *Suffolk Ins. Co.*, 13 Pet. 415	33
Wilson v. *Shaw*, 204 U. S. 24	19

Statutes and Charter:

	Page
Act of March 2, 1901, 31 Stat. 895	22
Act of August 19, 1916, 39 Stat. 545, 547, Sec. 5	15
Act of March 27, 1942, 56 Stat. 174, 176	39
Air Commerce Act of 1926, 49 U.S.C. 171, 179(b)	12
Bank Conservation Act, 48 Stat. 2, 12 U.S.C. 202	11
Civil Aeronautics Act, 49 U.S.C. 401	12
Commodities Exchange Act, 7 U.S.C. 2	12
Fair Labor Standards Act of 1938 (Act of June 25, 1938, 52 Stat. 1060, 29 U.S.C. 201 *et seq.*):	
Sec. 2	43
Sec. 3(b)	2
Sec. 3(c)	2, 9, 12
Sec. 6	2
Sec. 7	2
Sec. 13	41
Federal Communications Act of June 19, 1934 (48 Stat. 1064, 1065, 47 U.S.C. 153(g), (v)), Section 3	11
Federal Employers' Liability Act (35 Stat. 65, 45 U.S.C. 52), Section 2	11
Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321(a)	12
Federal Seed Act, 7 U.S.C. 1561(a)(3)	12
Federal Trade Commission Act (38 Stat. 717, 719, 15 U.S.C. 44), Section 4	47
Filled Milk Act, 21 U.S.C. 61(b)	12
Firearms Act, 15 U.S.C. 901(2), (7)	12
National Labor Relations Act, (49 Stat. 449, 450, 29 U.S.C. 152(6)), Section 2(6)	47
Nationality Act of 1940, 54 Stat. 1137, 8 U.S.C. 501(e)	22
Packers and Stockyards Act, 7 U.S.C. 182(6)	12
Portal-to-Portal Act of 1947, 61 Stat. 84, 29 U.S.C., Supp. I, 251	16
8 Stat. 200, 202	18
8 Stat. 252, 254	18
15 Stat. 539	19
30 Stat. 750	19
30 Stat. 1754, 1755	19, 20
31 Stat. 41, 48 U.S.C. 491	10
31 Stat. 1878, 1879	19
33 Stat. 2234-2235	19
37 Stat. 512, 48 U.S.C. 21	10
39 Stat. 1706	19
45 Stat. 1253	19

Statutes—Continued — Page

55 Stat. 1574-1589 — 28
Surplus Property Act of 1944, 50 U.S.C. App. 1612(i), Sec. 2 — 12
Tariff Act of 1922, 42 Stat. 858, 19 U.S.C. 121 — 16, 24
39 U.S.C. 283, 654 — 12
42 U.S.C. 201(g) — 12
United Nation Charter (59 Stat. 1033, 1048), Article 73(e) — 37

Miscellaneous:

Agreement of July 2, 1903, 1 Malloy *Treaties* (1910) — 23
Art. III — 23
IV — 23
V — 24
81 Cong. Rec. 4960, 4961 — 43
81 Cong. Rec. 7921-7925 — 44
81 Cong. Rec. 7957 — 13
82 Cong. Rec. 1573 — 13
83 Cong. Rec. 9250 — 13
88 Cong. Rec. 965 — 38
88 Cong. Rec. 1851 — 39
Dept. of Labor Interpretive Bulletin No. 2, Oct. 17, 1938 (Wage and Hour Manual (1942 Ed.), p. 30) — 14
Exchange of Notes, Lease and Agreement between the United States and Great Britain, 55 Stat. 1560-1599 — 3, 26
Executive Agreement Series No. 235, Leased Naval and Air Bases (GPO 1942), pp. 14-15, 20, 17-34, 41, — 3, 26, 28, 29-32
12 F. R. 4583-4584, 29 C.F.R. 1947 Supp. Sec. 776 — 16
1 Hackworth, *Digest of International Law*, p. 421 — 18
2 Hackworth, *Digest of International Law*, pp. 172-173 — 19
Hearings on H. R. 5096, House Committee on the Judiciary, 77th Cong., 1st sess., tr. 22-23, 25 — 27, 28
H. Doc. 255, 75th Cong., 1st sess., p. 1 — 43
H. Doc. 943, 76th Cong., 3d sess., pp. 1, 5 — 27
H. R. 6382, 77th Cong., 2d sess. — 39
H. Rep. 1452, 75th Cong., 1st sess., pp. 11-12 — 13
H. Rep. 2182, 75th Cong., 3d sess., p. 2 — 13
H. Rep. 2738, 75th Cong., 3d sess., pp. 2, 13, 21 — 13
1 Hull, *Memoirs* (1948), p. 834 — 27
Hyde, *International Law* (2d Ed., 1945), p. 358 — 18
Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor on S. 2475 and H. R. 7200, 75th Cong., 1st sess., pp. 77, 113, 134-135, 208, 257, 287, 302-303, 354-355, 375, 417-420, 509, 814 — 44
1 Lauterpacht, *Oppenheim's International Law* (5th Ed., 1937), pp. 430, 431 — 18

Miscellaneous—Continued

	Page
1 Malloy, *Treaties* (1910), pp. 358-359, 360-361	22, 23
Official Answers to Questions, Wage and Hour Manual (Cum. Ed., 1944-1945), p. 116	44
34 Op. Atty. Gen. 287	21
35 Op. Atty. Gen. 536, 540-541	16, 24, 26
39 Op. Atty. Gen. 484, 485, 487, 488	27, 34
40 Op. Atty. Gen. No. 10 (April 16, 1941)	19
117 *Parliamentary Debates, House of Lords*, 367	27
364 *Parliamentary Debates, House of Commons*, 1170-1171	26
S. 2198, 77th Cong., 2d sess.	39
S. 2475, 75th Cong., 1st sess.	13
S. Rep. 884, 75th Cong., 1st sess., pp. 5-6	13
S. Rep. 1012, 77th Cong., 2d sess., pp. 2-3	38
Summary of Information transmitted by the Government of the United States of America (U. N. Release A/320, 25 July 1947), p. 1	19
The United States and Non-Self-Governing Territories (GPO 1947), p. 21, n. 1	19
United Nations, Non-Self-Governing Territories, Summaries of Information Transmitted to the Secretary General during 1946 (U. N. Publications 1947), pp. 101-129, 134	19, 37
Wilson, *Leased Territories*, 34 Am. J. of International Law, 703, 704	25, 28
Winant, *Letters from Grosvenor Square* (1948), pp. 33-38	27

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 22

VERMILYA-BROWN COMPANY, INC., ET AL.,
PETITIONERS

v.

JOHN JOSEPH CONNELL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 59-62) is reported at 73 F. Supp. 860. The opinion of the United States Court of Appeals for the Second Circuit (R. 65-73) is reported at 164 F. 2d 924.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on

November 28, 1947 (R. 73). The petition for a writ of certiorari was filed on February 19, 1948, and was granted on March 29, 1948 (R. 75). 333 U. S. 859. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a base held by the United States under lease from Great Britain pursuant to the Exchange of Notes of September 2, 1940, between the two Governments and the Leases and Agreement signed March 27, 1941, is a "Territory or possession of the United States" within the meaning of Section 3(c) of the Fair Labor Standards Act.

STATUTES AND DOCUMENTS INVOLVED

The Fair Labor Standards Act of 1938 (Act of June 25, 1938, 52 Stat. 1060, 29 U.S.C. 201 *et seq.*) covers all employees, with certain exceptions not here material, who are "engaged in commerce or in the production of goods for commerce." Sections 6, 7.

Section 3 of the Act contains the following pertinent definitions:

> (b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.
>
> (c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Petitioners have filed separately for the convenience of the Court, the printed document entitled *Executive Agreement Series 235, Leased Naval and Air Bases* (GPO, 1942) which contains the Exchange of Notes, Lease and Agreement between the United States and Great Britain (55 Stat. 1560-1599) relating *inter alia*, to the leased bases involved in this case.

STATEMENT

Pursuant to an Exchange of Notes on September 2, 1940, the United States and Great Britain, on March 27, 1941, entered into an Agreement and Leases, whereby Great Britain agreed to lease to the United States for ninety-nine years, certain areas in Bermuda as well as Newfoundland, Jamaica, St. Lucia, Antigua, Trinidad, British Guiana and the Bahama Islands for use as naval and air bases, under the terms and conditions set forth in these documents. The United States, through the Corps of Engineers, United States Army, entered into a contract with the respondents as joint contractors for the construction of the Outlying Defenses Base known as Fort Bell and Kindley Field in Bermuda. Respondents are eleven of petitioners' employees, engaged to perform the duties of policemen and firemen required in connection with this construction contract. These duties were performed at the site of the project in Bermuda.

After returning to the United States, respondents on October 20, 1945, brought this suit against

petitioners in the Supreme Court of the State of New York, County of New York, seeking to recover overtime compensation, liquidated damages and attorneys' fees in accordance with the provisions of the Fair Labor Standards Act (R. 2-8). After removal of the suit to the United States District Court for the Southern District of New York (R. 1), petitioners by amended answer denied the pertinent allegations of the complaint and pleaded as a separate defense that respondents were not covered by the Act (R. 8-9). Petitioners thereafter moved for summary judgment (R. 12-13), on the grounds, (1) that the Fair Labor Standards Act has no application to the respondents' employment in the leased areas of Bermuda; (2) that respondents were engaged in work of original construction and were, therefore, not covered by the Act; and (3) that two of the respondents were exempt from the provisions of the Act as executive and administrative employees (R. 60). Various affidavits and depositions were filed by both parties on this motion (R. 13-59).

The District Court granted petitioners' motion for summary judgment and dismissed the complaint on the merits (R. 62-63) In its opinion, the court commented that respondents made "no contention that any of these leased areas is a 'Territory' of the United States, but they insist that such areas are possessions of the United States" (R. 60-61). The court stated, "Whether [the leased areas] are possessions of the United States depends

on whether they are within the sovereign jurisdiction of the United States. That is a political question to be determined by the legislative and executive departments of the government" (R. 61), and these departments "have clearly indicated that these leased areas are not within the sovereign jurisdiction of the United States" (R. 61). Accordingly, it held that "the Fair Labor Standards Act has no application to the employment of the * * * [respondents] in the leased areas of Bermuda" (R. 60). This determination, the court concluded makes it "unnecessary to pass on the other contentions of the * * * [petitioners]" (R. 62). On appeal, the court below reversed (R. 73).

INTEREST OF THE UNITED STATES

The Government is interested in this case primarily because the Department of State is seriously concerned as to the possible effect upon our foreign relations of a holding that various leased naval and air bases in British territories are "possessions" of the United States, and secondarily because of the large amount of construction work let to private contractors on a cost-plus basis at these and other bases required under agreements the same as or extremely close to the agreement here involved.

SUMMARY OF ARGUMENT

The Bermuda bases were not acquired until after the enactment of the Fair Labor Standards Act, although at that time, the United States operated, under a similar lease, the Guantanamo Naval Base. The question here raised is one of statutory con-

struction, whether these bases are "possessions of the United States" within the meaning of the Act and hence included within its coverage.

I. The phrase "Territory or possession of the United States" in the Fair Labor Standards Act was used not in a sense special to that Act but in the same sense as in a variety of other statutes, where it has become virtually a phrase of art, to cover only those areas long known as Territories and possessions. That the phrase was not intended to be given a meaning broader than customary appears from the fact that "possession" was inserted over the initial protest of the House of Representatives and was allowed to remain only as a a result of the conference between the managers on the part of both Houses, and from the fact that nothing was said to indicate that anything but the usual meaning was intended.

The Wage and Hour Division, the agency charged with the administration of the Fair Labor Standards Act, administratively construed "possessions" in its ordinary sense in 1938, when the only leased area operated by the United States was Guantanamo Naval Station. The Division reissued this interpretation, after reexamination, in 1947, although by that time, the leased areas here involved had been acquired. This construction has been adhered to in response to specific inquiries.

II. The Bermuda bases are not "possessions of the United States" in the ordinary sense. The British and American officials participating in the

proceedings leading up to the formal Lease and Agreement were in accord that no transfer of sovereignty over these areas to the United States was involved, which transfer is essential to the acquisition of a "possession." Transfer of sovereignty was involved in the acquisition of the areas long known as possessions of the United States, but on the other hand, no transfer of sovereignty was involved in the acquisition of the Guantanamo Naval Station which, while acquired under a lease vesting in the United States substantially broader rights than those granted by the lease here involved, is uniformly recognized as not being a possession of the United States. Moreover, both the Lease itself, which is phrased in terms of "demise," not cession of sovereignty, and the provisions of the Agreement are consistent with the understanding of the participating officials, and demonstrate that the tenure of the United States was to be that of lessee, and not that of sovereign. These provisions indicate that the United States thereby acquired a mere governmental outpost, over which its control fell far short of the complete control obtained in the other areas long known as "possessions" of the United States.

Both the executive and legislative departments have regarded the bases here involved as not being "possessions" of the United States. The Attorney General has so stated, and the Department of State has consistently taken that position. Congress in legislation has indicated the same understanding. These views, as this Court has long recognized, are

entitled to great, if not conclusive weight, since the present controversy involves a political question, affecting our relations with Great Britain and potentially other foreign countries which have leased bases to the United States on similar terms and conditions.

III. The alternative independent ground advanced by respondents in support of the judgment below, that they fall within the literal terms of the definition of commerce—"from any State to any place outside thereof"—is without substance. It ignores the geographic limitations of the Act implicit in the definition of "State," as well as the purpose of that portion of the commerce definition, which was to assure that employees located in the United States and engaged in activities in connection with exportation would be covered. It also disregards the usual canon of construction that all legislation is *prima facie* territorial, and overlooks the primary purpose of the Act, which, was to improve domestic, not foreign, conditions of employment. In addition, the fact that Congress did not exhaust its constitutional authority in the continental United States or over the territories and possessions, militates against any suggestion that Congress intended, nevertheless, to exercise whatever extraterritorial power it had. Finally, respondent's suggested limitation on the phrase "to any place outside thereof" to include only places "where the federal government controls the flow of commerce", while possibly resulting in includ-

ing respondents within the Act, would have the consequence of placing a substantial limitation on the Act's coverage contrary to the clear intent of Congress.

ARGUMENT

The Fair Labor Standards Act became law in 1938. Section 3(c) of the Act as then enacted, and as it still stands today, unamended and unchanged, defines the geographical coverage of the Act by including within the definition of the term State "any Territory or possession of the United States." At that time, in addition to the areas long known as territories and possessions, the United States operated under a lease, similar in many respects to that here involved, a naval base in Guantanamo Bay, Cuba, which, as we show, *infra*, pp. 22-25, has never been considered a possession of the United States.

The question raised by the present case is not whether Congress had the power to extend the coverage of the Fair Labor Standards Act to employees' activities at these bases. The issue is whether Congress intended the Act to apply to the various areas outside the continental limits of the United States, leased after the passage of the Act as military bases from various foreign governments.

The court below held that the Bermuda bases were "possessions of the United States."[1] This

[1] No contention has been advanced at any time that these bases are territories of the United States. It has long been established that the term "Territory of the United States"

holding appears to have been based both on the theory that the phrase "possessions of the United States" had a special meaning for the purposes of the Fair Labor Standards Act, and hence encompassed the leased bases (see *Eckert* v. *Elmhurst Contracting Co.*, 185 Misc. 108 (City Ct. N.Y., N.Y. Cty.) affirmed, 186 Misc. 100 (S. Ct. App. Term, 1st Dept.); *Crowe* v. *Elmhurst Contracting Co.*, 74 NYS (2d) 445 (Sup. Ct., N.Y. County), affirmed, 79 NYS (2d) 876 (App. Div. 1st Dept.), and on the theory that the leased bases were possessions of the United States in the ordinary sense, and hence covered by the Act (R. 68, 71-72).

The Government believes that neither theory is sound. In Point I, we will demonstrate that Congress used the phrase "possessions of the United States" in its normal sense, not in a sense special to the Act here involved. We will show in Point II that the bases leased from Great Britain are not possessions of the United States in that sense. In Point III, we will discuss the contention advanced by respondents for the first time in their brief in opposition, based on the definition of "commerce" in Section 3(b) of the Act.

---

normally applies only to those territories which have been incorporated into the United States, and not to unincorporated territories. See *De Lima* v. *Bidwell*, 182 U. S. 1; *Dooley* v. *United States*, 182 U.S. 222; *Downes* v. *Bidwell*, 182 U.S. 244; *Balzac* v. *Porto Rico*, 258 U. S. 298; compare *Puerto Rico* v. *Shell Co.*, 302 U.S. 253. Only Alaska and Hawaii have been so incorporated into the United States and have been designated as Territories by Congress. See 37 Stat. 512, 48 U.S.C. 21; 31 Stat. 41, 48 U.S.C. 491.

I

The phrase "Possessions of the United States" in Section 3(c) of the Fair Labor Standards Act is used in its ordinary sense and not in a sense peculiar to that Act.

Congress has used the phrase "possessions of the United States" in a variety of statutes. This use has usually been in conjunction with "Territory," so that the phrase "Territory or possession of the United States" has become virtually a phrase of art by which Congress indicates that the specific legislation before it is to cover the various areas long known by that designation.

Thus Section 3 of the Federal Communications Act defines the "United States" for the purposes of that Act to mean the "several States and Territories, the District of Columbia, and the *possessions*[2] of the United States," and defines State to include "the District of Columbia and the Territories and *possessions*." Act of June 19, 1934, 48 Stat. 1064, 1065, 47 U.S.C. 153(g)(v). The Bank Conservation Act defines "State" as "any State, Territory or *possession* of the United States, and the Canal Zone." 48 Stat. 2, 12 U.S.C. 202. Section 2 of the Federal Employers' Liability Act provides that "Every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other *possessions* of the United States shall be liable in damages * * *." 35 Stat. 65, 45 U.S.C. 52. Section 2 of the Surplus Property Act of 1944 defines

[2] Italics supplied unless otherwise noted

"State" to mean "the several States, territories, and *possessions* of the United States, and the District of Columbia". 50 U.S.C. App. 1612(i). For other examples, see Commodities Exchange Act, 7 U.S.C. 2; Packers and Stockyards Act, 7 U.S.C. 182(6); Federal Seed Act, 7 U.S.C. 1561(a)(3); Firearms Act, 15 U.S.C. 901(2), (7); Filled Milk Act, 21 U.S.C. 61(b); Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321(a); Air Commerce Act of 1926, 49 U.S.C. 171, 179(b); Civil Aeronautics Act, 49 U.S.C. 401 (20), (29) (31); 42 U.S.C. 201(g) and 39 U.S.C. 283, 654.[3]

Congress in using the phrase "Territory or possession of the United States" in Section 3(c) of the Fair Labor Standards Act used it, we submit, in the same sense as in these various statutes, in accordance with its long established practice.

A. THE LEGISLATIVE HISTORY OF THE ACT INDICATES THAT "POSSESSION OF THE UNITED STATES" WAS USED IN ITS ORDINARY SENSE.

The Act's legislative history, we submit, discloses that the Congress did not intend to expand the phrase "possession of the United States" beyond its ordinary meaning.

Section 2(a) of the fair labor standards bill passed by the Senate (S. 2475, 75th Cong., 1st sess.;

[3] The consistent use in these statutes of "possession" (uncapitalized) alongside of "Territory" (capitalized) set out in the text reveals, we submit, the inherent fallacy in the reasoning below that the omission to capitalize "possession" indicates a Congressional intention "to be as broadly inclusive as the simple definition of Webster's Dictionary * * *." (R. 69).

81 Cong. Rec. 7957) defined "State," in the form finally adopted, to include "any Territory or possession of the United States." See H. Rep. 2738, 75th Cong., 3d sess., p. 13; 82 Cong. Rec. 1573; 83 Cong. Rec. 9250. When the proposed legislation was in the House of Representatives, all of the Senate bill after the enacting clause was stricken and a bill entirely different in substance inserted. The definition of "State" finally proposed by the House was limited to the various States, the District of Columbia, and the Territories; it did not include "possession of the United States." See H. Rep. 2182, 75th Cong., 3d sess., p. 2; H. Rep. 2738, 75th Cong., 3d sess., p. 21. It was only after the managers on the part of both houses met in conference that the phrase "possession of the United States" appeared again. H. Rep. 2738, 75th Cong., 3d sess., p. 2. The fact that one House of Congress originally opposed extension of the Act to include the possessions strongly suggests that Congress did not intend "possession" to have a meaning broader than customary.

Nowhere in legislative history is there any reference to the meaning of this definitional phrase. See S. Rep. 884, 75th Cong., 1st sess., pp. 5-6; H. Rep. 1452, 75th Cong., 1st sess., pp. 11-12. Use of a well known term without discussion also indicates that Congress meant the term to have its ordinary meaning.

The absence of such discussion becomes even more significant in light of the fact that at that

time the United States was operating a Naval Base in Guantanamo Bay under lease from Cuba, under an arrangement very much like that involved here. That base has not been regarded as a territory or possession for other purposes. If Congress had intended it to be covered by the Fair Labor Standards Act, presumably the matter would have been mentioned.

B. THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION HAS INTERPRETED "TERRITORY OR POSSESSION OF THE UNITED STATES" AS HAVING ITS ORDINARY MEANING.

1. The Wage and Hour Division of the Department of Labor, charged with the administration and enforcement of the Fair Labor Standards Act has interpreted the phrase involved as being limited to those areas normally considered territories and possessions of the United States. Interpretative Bulletin No. 2, issued on October 17, 1938, shortly after the Act's enactment, reads as follows (Wage and Hour Manual (1942 Ed.) p. 30):

> * * * In Section 3(c) "State" is defined as meaning "any State of the United States, or the District of Columbia, or any Territory or possession of the United States."
>
> Therefore, employees within the District of Columbia, and the Territories and possessions (Alaska, Hawaii, Puerto Rico, the Canal Zone, Guam, Guano Islands, Samoa, Virgin Islands)

> are dealt with on the same basis as employees working in any of the forty-eight States.

The Philippine Islands aside,[4] this enumeration of territories and possessions includes only areas long known as territories and possessions of the United States.

Although the particular bases here involved had not yet been leased to the United States at the time of the issuance of this Bulletin, the United States did at that time operate the Guantanamo Bay Naval Base under lease from Cuba. That base, although leased to the United States on terms which are in many respects broader in effect than the terms of the lease under which the United States acquired the bases here involved (see *infra*, pp. 22-25), was not included in the Wage and Hour Division's enumeration of "Territories or possessions of the United States." This accords with the omission of the Base from non-self-governing areas for which the United States is responsible as to which the State Department submitted information to the United Nations (*infra*, pp. 24, 37), and with the ruling of the Attorney General that the Base was not a "possession" of the United States within the meaning of the Tariff Act of 1922 (42 Stat. 858, 19 U.S.C. 121); 35 Op. Atty. Gen. 536, see *infra*, p. 24.

---

[4] Section 5 of the Act of August 19, 1916, 39 Stat. 545, 547 provides: "The statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

Inasmuch as the Portal-to-Portal Act of 1947, 61 Stat. 84, 29 U.S.C., Supp. I, 251, contemplates that interpretations of the Administrator of the Wage and Hour Division should in certain circumstances be controlling in determining rights and liabilities in the courts, the Administrator in 1947 reexamined various of his interpretations to determine whether they then correctly interpreted the law in the light of developments since their issuance. See 12 F.R. 4583; 29 C.F.R., 1947 Supp., Sec. 776. Among the interpretations reexamined was that relating to the meaning of the phrase "Territories or possessions of the United States." Although the United States had by that time acquired the leased bases here involved, the provisions of Interpretative Bulletin No. 2, *supra*, were reissued in the original form; they continued to list as included Territories and possessions only "Alaska, Hawaii, Puerto Rico, the Canal Zone, Guam, Guano Islands, Samoa, Virgin Islands." 12 F.R. 4583-4584; 29 C.F.R., 1947 Supp., Sec. 776.1 par. 24, 102.01(c).

3. In its responses to inquiries from the public whether employment at the bases leased from Great Britain or other foreign countries was covered by the Fair Labor Standards Act, the Wage and Hour Division has interpreted the phrase here involved as limited to possessions of the United States in the ordinary sense. Indeed, until at least 1944, the Division ruled specifically that these bases were not

"possessions of the United States" and hence that employment there was not covered. The Administrator in a letter of May 22, 1942 (Appendix B, *infra*, p. 55), interpreted the Act as not covering employment at the leased base in the British West Indies, and in letters of October 21, 1942 (Appendix B, *infra*, p. 56), and September 24, 1943 (Appendix B, *infra*, p. 55), the Wage and Hour Division again interpreted the Act as excluding employment at the leased base in Trinidad.

Subsequently, however, he has declined to pass on the question. He stated (R. 56) that the "State Department officials who were consulted * * * indicated that thus far the United States Government has not made any claim that the base secured from the British are possessions of this country and that the State Department has not made any ruling or issued any interpretations pertaining to the matter." He accordingly deferred determination of the status of these leased lands to "court decisions, congressional or executive acts, or interpretations issued by the State Department or other proper governmental agencies." In so declining to pass on the question, the Administrator plainly contemplated that the question of the status of the leased areas would not be determined with particular reference to the Fair Labor Standards Act but rather would be a determination as to status generally, i.e. whether these bases were possessions of the United States in the ordinary sense.

II

The Bermuda bases are not possessions of the United States [5]

A. THE LEASING OF THE BASES DOES NOT INVOLVE THE TRANSFER OF SOVEREIGNTY ESSENTIAL TO THESE AREAS BECOMING POSSESSIONS OF THE UNITED STATES.

1. *Right of sovereignty over area is essential to area's being "possession of the United States."* (i) *The possessions generally.* The various international law authorities are unanimous in defining acquisition of territory in terms of a transfer of sovereignty to the acquiring nation. I Lauterpacht, *Oppenheim's International Law* (5th Ed. 1937) pp. 430, 431; I Hackworth, *Digest of International Law*, p. 421; Hyde, *International Law* (2d Ed. 1945) p. 358. In all instances in which this country has acquired land treated as a possession a transfer of sovereignty was clearly involved. See 8 Stat. 200, 202 (acquisition of Louisiana Territory from France); *Delassus* v. *United States*, 9 Pet. 117, 133; *Strother* v. *Lucas*, 12 Pet. 410, 435-436; 8 Stat. 252, 254 (acquisition of Florida from Spain); cf. *United States* v. *Percheman*, 7 Pet. 51, 86-88; 15 Stat. 539 (Alaska); 30 Stat. 750 (Ha-

[5] The determination whether the Bermuda bases are "possessions of the United States" in the ordinary sense has significance not only for resolving the question of coverage under the Fair Labor Standards Act but in addition will determine the applicability of numerous other statutes applying to possessions of the United States, some of which we have listed, *supra*, pp. 11-12. See also petitioner's brief, p. 45.

waii); *Hawaii* v. *Mankichi*, 190 U. S. 197; 39 Stat. 1706 (Danish West Indies); 31 Stat. 1878, 1879; 45 Stat. 1253 (Tutuila, Manua and other Eastern Samoan Islands); 30 Stat. 1754, 1755 (Puerto Rico, Guam and the Philippine Islands).[6]

Such a transfer of sovereignty has been an essential ingredient of the acquisition not only where the area involved is incorporated into the United

---

[6] The status of the Panama Canal Zone is anomalous. This Court after reviewing the terms of the treaty (33 Stat. 2234-2235) commented "it is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this Nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate." *Wilson* v. *Shaw*, 204 U. S. 24, at 33. However, the view that the Canal Zone is a possession of the United States has not been universally accepted. *Luckenbach S. S. Co.* v. *United States*, 280 U. S. 173, 177. And there have been instances when Congress specifically provided that for particular purposes the Canal Zone should be treated as a territory or possession of the United States. See *Luckenbach S. S. Co.* v. *United States*, *supra*, at 180; cf. 40 Op. Atty. Gen. No. 10 (April 16, 1941). Moreover, when the Department of State in 1946 included the Canal Zone among the non-self-governing territories on which reports were filed with United Nations (see *United Nations, Non-Self-Governing Territories, Summaries of Information Transmitted to the Secretary General during 1946* (U. N. Publications (1947); p. 101), the Panamanian Delegation voiced objection, arguing that sovereignty over the Canal Zone resides in the Republic of Panama. *The United States and Non-Self-Governing Territories* (GPO 1947), p. 21, n. 1. In view of this statement, the Department of State did not transmit such information in 1947, "pending clarification of this question with the Republic of Panama." *Summary of Information transmitted by the Government of the United States of America* (U. N. Release A/320, 25 July 1947), p. 1. See also 2 Hackworth, *Digest of International Law*, pp. 172-173 (exchange of notes between United States and Panama when Supreme Court of Justice of Panama took position that its jurisdiction might be extended to cases arising within the Canal Zone and involving residents therein).

States as a state or territory but also, as this Court has recognized, where the area is not incorporated into the United States and becomes a "possession." In describing the relation of this country to Puerto Rico, Guam and the Philippine Islands—areas acquired by the Treaty of Paris with Spain,[7] and which became "possessions" and not territories of the United States—this Court stated that these areas "came under the complete and absolute sovereignty and dominion of the United States." See *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 179. The Philippines, for example, although not "incorporated into" the United States, were held "under the sovereignty of the United States as a possession or dependency." See *Rassmussen* v. *United States*, 197 U. S. 516, 521. They "constituted a dependency, for they were not possessions merely, but possessions held by right of cession from Spain and over which the United States undoubtedly had supreme power of legislation and government. See *United States* v. *The Nancy*, 3 Wash. C. C. 281, 286, *et seq.*" *Posadas* v. *National City Bank*, 296 U. S. 497, 502; *Cincinnati*

[7] By the same treaty, Spain relinquished "all claim of sovereignty over and title to Cuba." But the obligations assumed by the United States in respect to Cuba were only for "so long as such occupation shall last." (30 Stat. at 1755). It is established that during this period of occupancy, Cuba remained none the less "foreign territory. It cannot be regarded, in any constitutional, legal or international sense, a part of the territory of the United States." *Neely* v. *Henkel*, 180 U. S. 109, 119; *Galban & Co.* v. *United States*, 40 C. Cls. 495, affirmed *per curiam*, 207 U. S. 579.

Soap Co. v. *United States*, 301 U. S. 308, 314; *Domenech* v. *National City Bank*, 294 U. S. 199, 204; *Galban & Co.* v. *United States*, 40 C. Cls. 495, 506-507, affirmed *per curiam*, 207 U. S. 579; cf. 34 Op. Atty. Gen. 287. In *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, this Court said in regard to the areas acquired from Spain by the Treaty of Paris (324 U. S. at 673):

> That our dependencies, acquired by cession as the result of our war with Spain, are territories belonging to, but not a part of, the Union of states under the Constitution, was long since established by a series of decisions in this Court beginning with *The Insular Tax* Cases in 1901; *De Lima* v. *Bidwell*, *supra* [182 U. S. 1]; *Dooley* v. *United States*, *supra*, 182 U. S. 222; *Downes* v. *Bidwell*, 182 U. S. 244; *Dooley* v. *United States*, 183 U. S. 151; and see also *Public Utility Commissioners* v. *Ynchausti & Co.*, 251 U. S. 401, 406-407; *Balzac* v. *Porto Rico*, *supra* [258 U. S. 298]. This status has ever since been maintained in the practical construction of the Constitution by all the agencies of our government in dealing with our insular possessions.

And Mr. Justice Reed, dissenting, stated (*ibid.* at 681-683):

> Lands are either within the sovereign power of the United States or are outside and beyond that power. When conquest ripens into ces-

sion, lands lose their foreign character and become a part of the territories of the victor.[8]

(ii) *Guantanamo Naval Base:* In contrast to the above examples of transfer of sovereignty whereby the area involved became a territory or possession of the United States, the acquisition of the Naval Base in Guantanamo Bay, Cuba, under a lease vesting substantially broader rights in the United States than was granted by the lease here involved, clearly did not transfer any sovereignty, and consequently, that area has never been regarded as a possession of the United States. It was acquired pursuant to the condition imposed by the Act of March 2, 1901 (31 Stat. 895), that "to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points." 31 Stat. at 898. A lease "subject to terms to be agreed upon by the two Governments" was concluded on February 16 and 23, 1903 (1 Malloy, *Treaties* (1910), pp. 358-359), providing that Cuba "hereby leases to the United States, for the time required for the purposes of coaling and naval stations," certain de-

[8] In this connection, it may be noted that Section 101(e) of the Nationality Act of 1940, 54 Stat. 1137, 8 U. S. C. 501(e), defines "outlying possessions" in terms of "territory • • • over which the United States exercises rights of sovereignty • • •"

scribed areas of land and water in the Bays of Guantanamo and Bahia Honda. Article I. This includes "the right to use and occupy the [adjacent] waters * * * to improve and deepen the entrances thereto and the anchorages therein, and generally to do any and all things necessary to fit the premises for use as coaling or naval stations only, and for no other purpose. Vessels engaged in the Cuban trade shall have free passage through the waters included within this grant." Article II. Article III provided: "While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas * * *."

Subsequently, the two Governments entered into an agreement "to conclude the conditions of the lease." Agreement of July 2, 1903, 1 Malloy, *Treaties* (1910), pp. 360-361. Article III of the conclusion agreement provided: "No person, partnership, or corporation shall be permitted to establish or maintain a commercial, industrial or other enterprise" in the areas. The parties further agreed to the delivery to each other of fugitives from justice charged with crimes amenable to

Cuban or American law respectively who are taking refuge in their respective areas. Article IV. No customs duties were to be levied on materials of any kind imported into the areas "for exclusive use and consumption therein." No such materials were to be transported from the areas "into Cuban territory." Article V.

In passing on the question whether, in light of these provisions of the lease and agreement, goods imported into the naval station are subject to tariff duties levied under the Tariff Act of 1922 (42 Stat. 858, 19 U. S. C. 121) "upon all articles when imported from any foreign country into the United States or into any of its possessions * * *," the Attorney General ruled that the area was not a possession of the United States, at least as the word is used in the tariff laws, but only a "place subject to the use, occupation and control of the United States for a particular purpose" in view of "the nature of the station, as a mere governmental outpost beyond our borders, without inhabitants other than as indicated, closed to ordinary commerce, and into which no person or thing may enter without permission." 35 Op. Atty. Gen. 536, 540-541.

The view that the Guantanamo Naval Base is not a possession of the United States has been uniformly accepted as of general applicability. The base was not included in the list of United States' "non-self-governing territories" submitted by the Department of State to the United Nations in 1946

or 1947. *Infra*, p. 37. It is not included in the Wage-Hour Administrator's enumerations of "possessions" under the Fair Labor Standards Act. *Supra*, pp. 14-16. Nor, as far as we are aware, has it been included in any other administrative or statutory enumeration of "possession" of the United States, other than in the Defense Base Act, where it was expressly included in the definition of possession, in order to achieve the comprehensive coverage of that Act. See Pet. Br. p. 38, fn. 9.

Dr. George Grafton Wilson in commenting on the status of the Naval Station, as one phase of the international problem of the status of leased areas, points out that the "United States acquired 'complete jurisdiction' of certain areas in Cuba for naval bases but recognized 'the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water,' which 'are therefore *leased* to the United States and not *ceded*'." (Italics in original). Dr. Wilson continues: "Sometimes the distinction between transfer of sovereignty and a lease by international convention differs little in actual operation, but, as the Japanese claimed in 1900, 'sovereignty is too important a matter to pass thus with a lease'." Wilson, *Leased Territories*, 34 Am. J. of International Law 703, 704.

2. *No transfer of sovereignty is involved in the leasing of the Bermuda bases:* Both the negotiations preceding execution of the Agreement by

which Great Britain leased the Bermuda bases to the United States, and the Executive Agreement itself, reveal beyond any doubt that neither the United States nor Great Britain intended that sovereignty over the areas leased be transferred from Great Britain to the United States. Consequently, we believe that the leased areas, instead of becoming possessions of the United States are as is the Guantanamo Naval Base, "mere governmental outpost[s]," "place[s] subject to the use, occupation and control of the United States for a particular purpose." Cf 35 Op. Atty. Gen. 536, 540-541.

(i) *The Negotiations:* Prior to the negotiations of the formal detailed Agreement and Leases, there was on September 2, 1940 an Exchange of Notes between Great Britain and United States setting out the general agreement of the two nations. 55 Stat. 1560, 1572-1573, *Executive Agreement Series 235, Leased Naval and Air Bases,* pp. 14-15. As the British note formulated it, Great Britain was to "secure the grant to the Government of the United States * * * of the lease for immediate establishment and use of Naval and Air bases and facilities * * *" on specified British territories. 55 Stat. at 1572. The members of the British Government in discussing in Parliament this phase of the proposed transaction [9] made it clear that there was no transfer of sovereignty intended. The Prime

[9] The exchange of notes also provided for the transfer to Great Britain of 50 over-age destroyers.

Minister reporting to the House of Commons stated explicitly: "* * * there is, of course, no question of any transference of sovereignty—that has never been suggested * * *." 364 *Parliamentary Debates, House of Commons,* 1170-1171. And the Secretary of State for Foreign Affairs advised the House of Lords that "No question of any transference of sovereignty arises." 117 *Parliamentary Debates, House of Lords,* 367.

Those in charge for the United States likewise considered the transaction purely a lease arrangement without any cession of territory or transfer of sovereignty. President Roosevelt's message to Congress on September 3, 1940, making public the exchange of notes stated only that the United States had "acquired the right to lease naval and air bases" at enumerated British Empire points in the Western Hemisphere. H. Doc. 943, 76th Cong., 3rd sess., p. 1. The Attorney General's opinion transmitted therewith indicated that "the privilege of maintaining such bases is subject only to limitations necessary to reconcile United States use with the sovereignty retained by Great Britain," *id.* at p. 5, 39 Op. Atty. Gen. 484, 485, *infra,* pp. 34-36; see also 1 Hull, *Memoirs* (1948), p. 834. The members of the United States Commission, who negotiated the Agreement and the Leases, were keenly aware of the limited purpose and character of the arrangements and conducted their dealings on that basis. See Hearings on H. R. 5096, House Committee on the Judiciary, 77th Cong., 1st sess., tr. 22-23 (testimony of Assistant Solicitor General

Fahy who had served as civilian representative on the Commission); Winant, *Letters from Grosvenor Square* (1948), pp. 33-38. On the issue of sovereignty the members of the United States Commission "never departed from the positions that the heads of the two governments had taken," namely, that "sovereignty was not transferred." Hearings on H. R. 5096, *supra*, tr. 25.

(ii) *The Leases and the Agreement:*[10] In contrast to the various treaties by which land was ceded to the United States by explicit transfer of sovereignty, the lease document for the Bermuda area provides that His Majesty, the King, "doth * * * demise * * * all that property * * * to hold unto the United States of America for a term of ninety-nine years * * * for the purposes specified in the * * * Notes." The United States was not to "use the said property or permit the use thereof, except for the purposes specified in the * * * Notes and Agreement." 55 Stat. 1576, 1577; *Executive Agreement Series 235, supra*, p. 20.[11] Cf. Wilson, *Leased Territories, supra.*

[10] There was a separate lease executed for each of the areas leased to the United States. The Agreement, on the other hand, was a single document pertaining to all areas involved.

[11] The leases of the various other bases involved in the Exchange of Notes and the Agreement follow the same pattern, except that in some cases, the lessee is not the King, but the Governor-General of territory in which the particular area is located. 55 Stat. 1574-1589; *Executive Agreement Series, 235*, pp. 17-34.

In dealing with the Agreement, the court below attempted to summarize various of the rights and privileges granted thereby which, the court considered, indicated that the United States had acquired a possession (R. 67-68), but in so doing, the court omitted several significant limitations even as to these rights and privileges. For instance, the court emphasized the broad authority granted to the United States by Articles I (General Description of Powers) and II (Special Emergency Powers), but these rights and privileges were necessarily limited by the subsequent specific provisions which illustrate the restricted nature of the grant. Moreover, the United States is not given by Article IV(i) an unqualified "absolute right" over the offenses enumerated therein, as suggested by the court below (R. 67), but only an absolute right "in the first instance" to assume and exercise jurisdiction with respect to such offenses. As stated in the Department of State's letter (Appendix A, *infra*, pp. 49-54), the jurisdiction conferred by that Article is limited. It is not confined to the leased areas but extends in some aspects also to the whole territory in which the base is situated. Similarly, the permission to establish postal facilities in the leased areas is not unlimited, as suggested below (R. 67-68), but restricted to "exclusive use of the United States forces, and civilian personnel * * * who are nationals of the United States and employed in connection with the construction,

maintenance, operation or defence of the Bases, and the families of such persons, for domestic use." Article XVI.[12] Nor is the suspension of the immigration laws of the Territory in regard to the leased areas unlimited (R. 67); these laws were suspended only to admit American military forces or personnel in connection with the construction, maintenance, operation or defense of the base, and the United States is responsible for providing passage out of the Territory for any such person no longer entitled to admission. Article XIII. The exemption from local income and poll taxes provided in Article XVII extends only to members of the United States forces and nationals of the United States employed in connection with the bases and does not include income derived from the Territory. Thus, the rights and privileges granted by the Agreement are not as broad as the court below indicated, a factor which, we submit, substantially impairs the soundness of its reasoning.

Moreover, as pointed out by the State Department, all these factors, taken together, are not sufficient to justify the conclusion below, for "during the war the United States has been granted

---

[12] An annex to the Agreement more sharply delineated the limitations on the right to establish postal facilities. "The use of these Post Offices will be strictly limited to persons entitled under Article XVI to use them, and any mail deposited in such a Post Office which may be found by the United States examiners to be from a person not entitled to use it will, if required, be made available to the authorities of the Territory for examination." *Executive Agreement Series No. 235*, p. 41.

exclusive jurisdiction over offenses committed by members of its armed forces stationed in many foreign countries; likewise exemptions from immigration laws, permission to establish postal facilities, exemption from income and other taxes, have been or are enjoyed by members of the armed forces of the United States and other governmental personnel in many foreign countries without any suggestion that by the grant of such rights and privileges the foreign sovereign concerned has surrendered its sovereignty or bargained away its possessions." Appendix A, pp. 51-52.

The court below placed considerable stress on the "interesting negative provision" (R. 68), that "it is understood that a Leased Area is not a part of the territory of the United States for the purpose of coastwise shipping laws so as to exclude British vessels from trade between the United States and the Leased Areas." Article XI(4). But the lease with Cuba for the Guantanamo Naval Base contains a similar provision, assuring free passage through the waters included in the grant to vessels engaged in the Cuban trade. *Supra*, p. 23. Yet, this provision has not been deemed sufficient to convert the Guantanamo Naval Base into a possession of the United States.[13] Thus, the provisions of the Agreement principally relied on by the

[13] In any case, this provision alone would not be sufficient to justify the conclusion below, in face of the various other limitations imposed by the Agreement on the use by the United States of the leased areas.

court below not only do not indicate that the areas involved in the leases were possessions of the United States, but rather demonstrate that the tenure of the United States is that of a mere lessee.

The court below also failed to give any weight to several additional provisions which likewise demonstrate that no transfer of sovereignty was involved and that the United States was a mere lessee. Article XVIII prohibits the establishment of business enterprises (except post exchanges) in the leased areas and enjoins any person from "habitually render[ing] any professional services in a Leased Area, except to, or for, the Government of the United States and the persons" connected with the base. Article XIV provides for the lifting of customs and other duties only for limited purposes and limited personnel, and prohibits the resale of goods so admitted except through post exchanges. Article XI(5) prescribes the operation of commercial aircraft except "for strictly military purposes," and Article XV provides "except with the consent of the Government of the Territory, no wireless station shall be established or submarine cable landed in a Leased Area otherwise than for military purposes." Article XXIII forbids the United States to "assign or underlet or part with the possession of the whole or any part of any Leased Area, or of any right, power or authority granted by the Leases or * * * [the] Agreement." Article XXV excludes from

the rights granted to the United States, all minerals (including oil), antiquities and treasure found on the leased areas. Article XXIX in effect provides that all laws of the Territory except those "which would derogate from or prejudice any of the rights conferred on the United States" are to be applicable in the leased area.

Those provisions, spelling out in detail a grant much more restricted than that involved in the lease of Guantanamo Naval Base (see *supra*, pp. 22-24), demonstrate clearly the limited nature of the grant involved in the Agreement, a grant which, we submit, not only does not transfer sovereignty over the leased areas to the United States but falls far short of subjecting these areas "to fully as complete control by the United States as obtains in other areas long known as 'possessions' of the United States" (R. 68).

B. THE EXECUTIVE DEPARTMENT HAS DETERMINED THAT THE BERMUDA BASE IS NOT A POSSESSION OF THE UNITED STATES

So far we have dealt with the question involved as if it were a purely "private controversy" to resolve an "issue between two groups of private parties" (R. 69, 70). In fact, the controversy is political in nature, affecting our relations with Great Britain and potentially other foreign countries which have leased bases to the United States on similar terms and conditions. See Pet. Br., pp. 45-52. In such matters, the views of the Executive

Department, as well as those of Congress, are entitled to great, if not conclusive, weight. This Court has long recognized that "who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government." *Jones* v. *United States*, 137 U. S. 202, 212, and cases there cited; *Pearcy* v. *Stranahan*, 205 U. S. 257, 265; *Williams* v. *Suffolk Ins. Co.*, 13 Pet. 415; cf. *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319-322. And the Executive Department of the Government has determined that the United States is not sovereign over the leased areas, and that these areas are not possessions of the United States.

1. Attorney General Jackson, in considering the power of the President to acquire these bases from the British Government by Executive Agreement as against a treaty subject to ratification of the Senate, summarized the proposed agreement as follows (39 Op. Atty. Gen. 484, 485):

> The acquisition consists only of rights, which the United States may exercise or not at its option, and if exercised may abandon without consent. The privilege of maintaining such bases is subject only to limitations necessary to reconcile United States' use with the sovereignty retained by Great Britain. Our Government assumes no responsibility for civil ad-

> ministration of any territory. It makes no promise to erect structures, or maintain forces at any point. It undertakes no defense of the possessions of any country. In short it acquires optional bases which may be developed as Congress appropriates funds therefor, but the United States does not assume any continuing or future obligation, commitment, or alliance.

And in advising the President that the bases could be acquired by Executive Agreement, the Attorney General stated (at 487, 488):

> The proposition falls far short in magnitude of the acquisition by President Jefferson of the Louisiana Territory * * *. * * * the precedents perhaps most nearly in point are the numerous acquisitions of rights in foreign countries for sites of diplomatic and consular establishments—perhaps also the trade agreements recently negotiated under statutory authority and the acquisition in 1903 of the coaling and naval stations and rights in Cuba * * *.

The opinion plainly did not visualize the proposed lease of the Bermuda bases as involving the acquisition of territory or the transfer of sovereignty over areas involved to the United States, which transfer, we have shown *supra*, pp. 18-22, is a *sine qua non* to the cession of territory by one Nation to another. The Attorney General's statement that the maintaining of the bases is subject only to "limitations necessary to reconcile United

States' use with the sovereignty retained by Great Britain," recognizes that the sovereignty over the leased bases was retained by Great Britain, and not transferred to the United States. This statement accords with the subsequent proposition that the leases "fall far short in magnitude" of the Louisiana purchase involving the cession of that territory by France to the United States and with the analogy to the acquisition of sites in foreign countries for diplomatic and consular establishments and of the Guantanamo Naval Base in Cuba. There has never been any question that the sites of diplomatic and consular establishments in foreign countries are not possessions of the United States. Similarly, the Guantanamo Naval Base has never been considered a possession of the United States in the ordinary sense. See, *supra*, pp. 22-25.

2. There was before the court below a letter from the State Department stating that "this Government has not made any claim that the bases in Bermuda are territories or possessions of the United States" (R. 17). The court, however, refused to give any weight thereto on the ground that that letter went on to say, "there would therefore appear to be no reason for any ruling or opinion on the matter." This the court construed to negative any suggestion that the Executive Department had determined the issue (R. 71). While this case was pending on petition for certiorari, the Department of State addressed a letter to the Attorney General

dispelling any doubt as to its view on the matter. In this letter, the Department of State, after summarizing the various provisions of the lease, concluded (Appendix A, p. 53):

> The arrangements under which the leased bases were acquired from Great Britain did not and were not intended to transfer sovereignty over the leased areas from Great Britain to the United States. The leased areas are to be held by the United States for the stated period for certain specified uses of a military nature, and the United States is not free to use them as it would its own property * * *. The restrictions placed on use of the bases by the United States and the term of the lease are inconsistent with the conception of "possessions" of the United States as applied to the areas mentioned in the Court's opinion.

The position of the Department of State that the leased bases are not possessions of the United States is reflected in its annual reports to the United Nations. Under Article 73(e) of the United Nations Charter (59 Stat. 1033, 1048), the United States is required to submit information about "non-self-governing territories" for which the United States is responsible. In so doing, the United States has not reported as to any leased base area, although information has been submitted in regard to "all of the territories and island possessions" under American "administration" except "certain minor island possessions" which are un-

inhabited or sparsely settled, such as Wake, Midway and some of the Guano islands. See, *United Nations, Non-Self-Governing Territories* (UN Publication (1947), pp. 134, 101-129).

The letter from the State Department further declares (*infra*, pp. 52-53):

> The Department regards as unfortunate the conclusion of the Court that the U. S. exercises as complete control in the leased areas as in other areas long known as "possessions" of the U. S., * * *.
>
> Any holding that the bases obtained from the Government of Great Britain on 99 year leases are "possessions" of the United States in a political sense would not in the Department's view be calculated to improve our relations with that Government. Moreover, such a holding might very well be detrimental to our relations with other foreign countries in which military bases are now held or in which they might in the future be sought. The Department is not clear that the Court has so decided in the case under reference, but it feels that the matter is not free from doubt and in view of the possible implications that it should not be left in that state.

The significance of these remarks is obvious.

C. CONGRESS LIKEWISE HAS NOT REGARDED THE LEASED AREAS AS POSSESSIONS OF THE UNITED STATES

Since the acquisition of the leased bases, Congress has enacted legislation from which it is clear

that the Congress did not regard the leased bases as possessions of the United States.

War Damage Corporation: The War Damage Corporation was created by the Reconstruction Finance Corporation on December 13, 1941, and initially protected against loss only property located on continental United States. S. Rep. 1012, 77th Cong., 2d sess., pp. 2-3; 88 Cong. Rec. 965. On December 22, 1941, the protection was extended to property in Alaska, Hawaii, Puerto Rico and the Virgin and Philippine Islands. S. Rep. 1012, 77th Cong., 2d sess., p. 3; 88 Cong. Rec. 965. Thereafter, bills to confirm this action were introduced, limiting insurance protection "to property situated in the United States, including the several States, the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin and Philippine Islands." H. R. 6382, S. 2198, 77th Cong., 2d sess.

The law as enacted, however, authorized the War Damage Corporation to insure against loss "property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States." Act of March 27, 1942, 56 Stat. 174, 176. In response to a question as to what was contemplated by the "additional coverage" of the clause

"in such other places, * * *" as it appeared in the bill, a member of the House Committee on Banking and Currency, to which the proposed legislation had been referred, stated without correction (88 Cong. Rec. 1851):

> As I recall—and I can be corrected by my colleagues if I do not state it correctly—that referred to Navy bases and Army bases under the control and jurisdiction of the United States wherein there may be private property connected with them.

The inclusion of language, in addition to the phrase "Territory or possession of the United States," in order to cover such bases indicates that Congress did not consider the bases leased from various foreign countries as possessions of the United States.

III

The Fair Labor Standards Act Does Not Cover Employees engaged in "Commerce" outside the United States, its Territories and Possessions.

Respondents in their brief in opposition suggest that the question whether the Bermuda bases are possessions of the United States is not the controlling factor in this case, and advance an alternative independent ground in support of the judgment below. Their contention appears to be that since part of their duties as patrolmen and firemen at the Bermuda bases allegedly involved the guarding and protecting of goods moving into and through the leased areas from the United States, such ac-

tivities performed in these areas fall within that part of the definition of "commerce" which reads "trade * * * from any State to any place outside thereof." Accordingly, respondents argue, the Act embraces their activities and they are entitled to its benefits (Br. in Opp., pp. 5-6).

1. This literal reading of the definition would bring within the Act persons in foreign countries who transport and unload goods shipped from the United States. Assuming, *arguendo*, that respondents' duties required them to guard and protect goods moving into and through the leased area from the United States,[14] it does not follow that such activities alone, although falling within the literal definition of "commerce," are sufficient for coverage under the Act. Not only must the activities be in "commerce" but, in addition, we submit, the place of the performance of these activities must be in an area included within the geographic scope of the Act.[15] And although the Act contains no express delineation of its geographic coverage, we believe that Congress intended the areas included within the definition of "State," set out

---

[14] It has not been established or found that respondents' duties required them to guard and protect goods moving into and through the leased area. That issue is a factual one to be passed on by the District Court. The question was involved in one of the grounds on which petitioners moved for summary judgment (R. 60) and on which the District Court expressly took no action (R. 62).

[15] We do not mean to suggest that the Act might not apply to seamen in American vessels on the high seas if they were not expressly exempted by section 13 (a) (3).

immediately following the definition of "commerce," to mark out the Act's geographic limitations. Cf. *Burns* v. *Metcalfe Const. Co.*, 69 F. Supp. 381 (W. D. Mo.); *Bernhard* v. *Metcalfe Const. Co.*, 64 F. Supp. 953 (D. Neb.); *Filardo* v. *Foley Bros., Inc.*, 181 Misc. 136 (Sup. Ct. N. Y. County). As so limited, activities to be covered by the Act must for present purposes not only be in commerce but must also be performed in a State, the District of Columbia, or a Territory or possession of the United States. As so limited, the Act would have no extra-territorial application.

The phrase "to any place outside thereof" in the definition of "commerce," on which respondents' claim in this phase of the case is predicated, was included, we submit, for the purpose of making it clear that employees located in a "State" and engaged in producing goods for export or participating in the exportation itself were to receive the benefits of the legislation. If the definition of commerce included only trade between the States, a factory in a port city such as New York or Boston, producing goods for direct shipment from that port to a foreign country, or a longshoreman on the docks of these ports loading such goods on board ship, would not be covered by the Act. It was to avoid such a result, and not to extend the coverage of the Act extra-territorially, that "trade * * * from any State to any place outside thereof" was made part of the definition of "commerce."

This view accords with the usual canons of construction that "all legislation is *prima facie* territorial" (*American Banana Company* v. *United Fruit Company*, 213 U. S. 347, 357; *Ex Parte Blain*, 12 Ch. Div. 522, 528 (1879); *State* v. *Carter*, 27 N. J. (3 Dutcher) 499), and that "the legislation of the Congress, unless the contrary intent appears, is construed to apply only within the territorial jurisdiction of the United States," particularly where, as here, criminal penalties are involved. *Blackmer* v. *United States*, 284 U. S. 421, 437; see, also, *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 318; *United States* v. *Flores*, 289 U. S. 137, 155.

Moreover, although it is a well settled principle of construction that the meaning of the legislature is to be determined, if possible, from the language of an act, it is equally well established that a statute should be construed with reference to the purpose to be accomplished and the mischief to be corrected. *United States* v. *Carbone*, 327 U. S. 633, 637-639; *Chatwin* v. *United States*, 326 U. S. 455; *Smith* v. *Townsend*, 148 U. S. 490, 494; *Holy Trinity Church* v. *United States*, 143 U. S. 457. The purpose to be achieved and the mischief to be corrected by the Fair Labor Standards Act related to domestic and not foreign, conditions of employment. The President recommended the enactment of fair labor standards legislation primarily to improve domestic conditions of employment and to

increase purchasing power of employees. 81 Cong. Rec. 4960; H. Doc. 255, 75th Cong., 1st sess., p. 1. For that purpose, he proposed "that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade." 81 Cong. Rec. 4961. The Fair Labor Standards Act was enacted pursuant to this Presidential recommendation, and Congress' consideration of fair labor standards legislation was directed solely at the improvement of domestic conditions of employment. This is apparent from the extensive Hearings, the discussion of the proposed legislation on the floors of both Houses of Congress, and the graphic "Congressional finding and declaration of policy" set out in Section 2 of the Act. The only concern that Congress at any time manifested in regard to foreign trade was with respect to the increase of imports into the United States, which some members of Congress anticipated would result from the setting of minimum wages and maximum hours in the United States. See Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor, on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 77, 113, 134-135, 208, 257, 287, 302-303, 354-355, 375, 417-420, 509, 814; 81 Cong. Rec. 7921-7925.

In addition, the formulation of the definition of commerce in the Act, as finally passed, covers, not trade "between" any State and any place outside thereof as in the case of other statutes (See Pet. Br. p. 56), but rather "trade * * * from any State to any place outside thereof." Consequently, the Wage-Hour Administrator has construed the Act not to cover the employees of American employers within the State of importation who import goods from abroad, provided that the employees work within the State of importation exclusively on goods consumed within that State. See *Official Answers to Questions*, issued by the Administrator of the Wage-Hour Division in Wage and Hour Manual (Cum. Ed. 1944-1945), p. 116. Obviously, Congress, in denying the benefits of the Act to such employees of importers working in the United States, did not intend simultaneously to bestow its benefits on employees of importers working in a foreign country.

Furthermore, despite the fact that its objective in passing the Act was to improve domestic conditions of employment, Congress nevertheless "did not intend [in that Act] that the regulation of hours and wages should extend to the furthest reaches of federal authority." *McLeod* v. *Threlkeld*, 319 U. S. 491, 493. "In enacting this statute Congress did not see fit, as it did in other regulatory measures, e.g., the Interstate Commerce Act and the National Labor Relations Act, to exhaust its constitutional power over commerce." *10 E. 40th St. Co.*

v. *Callus*, 325 U. S. 578, 579; *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 521-523; *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 569-571. Nor has Congress exhausted its plenary power over the various territories and possessions. Although Congress had the power to reach all wages and hours in such areas, in them as well as in the states the Act only applies to employees engaged in commerce or in producing goods for commerce. Inasmuch as in these several respects the Act does not go to the constitutional limits of congressional power, it clearly does not follow that because Congress had authority to reach transactions in the leased areas it intended to do so.

2. Respondents seek to avoid the full logical consequences of their argument based on the literal language of the definition, which would apply to persons in foreign countries as well as in the leased areas, by urging that the phrase "to any place outside thereof" should be construed to reach only places "where the federal government controls the flow of commerce" (Br. in Opp., pp. 5-6). The suggested restriction reads into the Act words not only which Congress did not place there (cf. *Hilton* v. *Sullivan*, 334 U. S. 323; *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 617-618), but which, it is clear, Congress did not intend should be so included. This would extend the statute to areas not described in the following clause, which enumerates those places which are generally subjected to federal regulatory legislation. All of the con-

sideration heretofore advanced in this brief indicate that Congress did not intend any such limitation to be read into the Act.

Furthermore, if respondents' suggested restrictions were regarded as generally applicable to the definition of "any place outside thereof", the awkward result would be not to expand, but rather substantially to limit, the definition of "commerce." While it is true that it would extend the coverage of the Act to persons in respondents' position, it would also have the drastic consequence of excluding from coverage many employees working in the United States. The phrase "to any place outside thereof" does not stand alone; it is inseparably connected with the preceding phrase "trade * * * from any State * * *" and both phrases together express a single idea. Hence, respondents' suggested limitation on "to any place outside thereof" would operate to limit the entire concept involved, with the result that employees engaged in producing goods for commerce or engaged in commerce from any State to any place outside thereof which is not subject to Federal control, would be excluded from the definition of commerce. The export trade of this country to the areas subject to Federal control is infinitesimal, compared to our exports to other areas; accordingly, if respondents' suggestion were adopted, most, if not virtually all, employees engaged in producing goods for export, or in the exportation itself, would be denied the benefits of the Act.

Such a result is not only contrary to the purpose of Congress but also contrary to its intent as manifested in the language of the Act itself. The phrase "any place" in the definition of commerce is the broadest possible phrase that could be used; it is broader, for example, than the terms "foreign country" or "foreign nation" used in Section 4 of the Federal Trade Commission Act (38 Stat. 717, 719, 15 U.S.C. 44) and in Section 2(6) of the National Labor Relations Act, 49 Stat. 449, 450, 29 U.S.C. 152(6); cf. *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652. In deliberately using that phrase, Congress, we submit, clearly indicated an intention to provide the maximum coverage on the domestic phase of the export trade. The limitation suggested by respondents would effectively defeat this Congressional intention.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below is erroneous and should accordingly be reversed.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
ROBERT L. STERN,
Special Assistant to the Attorney General.
PAUL A. SWEENEY,
MELVIN RICHTER,
Attorneys.

OCTOBER 1948

APPENDIX A

DEPARTMENT OF STATE,
Washington, January 30, 1948.
[In reply refer to Le/M]

The Hon. TOM CLARK,
Attorney General.

MY DEAR MR. ATTORNEY GENERAL: Reference is made to Mr. Peyton Ford's letter of January 2, 1948, calling attention to the decision of the United States Circuit Court of Appeals for the Second Circuit in the case of *John Joseph Connell et al.* v. *Vermilya-Brown Company, Inc., et al.* in which it was held that the defense bases in Bermuda are possessions of the United States within the meaning of the Fair Labor Standards Act of 1938. A copy of the opinion was enclosed and an expression of the Department's views concerning the correctness and desirability of the holding were requested in view of the possible implications of the decision from the standpoint of the international relations of the United States.

In arriving at its decision the Court pointed out that under the Leased Bases Agreement of March 27, 1941, the United States is given broad authority within the leased areas appropriate for their control and defense and added that:

> Other provisions also serve to show the nature of the grant. Thus the United States is given the "absolute right" to assume and exercise jurisdiction of all offenses within a leased area, by a British subject "apprehended therein," and by any other person, without restriction, with provision for surrender of

offenders to the appropriate authority of the Territory if the United States so elects, Art. IV (1, 2), and for surrender of offenders to the United States authorities where they are within the Territory, but outside the leased areas, Art. VIII. The immigration laws of the territory adjacent to the bases do not apply to the leased areas, Art. XIII. United States postal facilities are to be established in the leased areas, Art. XVI. No person in the leased areas serving or employed there can be subject to income tax or poll tax of the territory adjacent to the bases, Art. XVII. The leased areas are to revert to the "Lessor" only when abandoned by the United States with "notice" of such abandonment, Art. XXI. And Art. XXIV, significantly entitled "Possession," provides: "On the signing of this Agreement, leases of the Leased Areas, substantially in the forms respectively set out in Annex II hereto, shall be forthwith executed, and all rights, power, authority and control under such leases and under this Agreement (including transfer of possession where it shall not previously have been transferred) shall thereupon become effective immediately, and pending execution of such Leases they may be exercised *ad interim* and possession of the Leased Areas shall be immediately given so far as the location thereof is then ascertained. Where the precise location of a portion of any Leased Area is not ascertainable until more detailed descriptions are available, possession of such portion shall be given as rapidly as possible." 55 Stat. Pt. 2, 1569.

The Agreement does not specifically declare the leased areas to be part of the territory of the United States. It does contain, however, the following interesting negative provision: "It is understood that a Leased Area is not a part of the territory of the United States for the purpose of coastwise shipping laws so as to exclude British vessels from trade between the United States and the Leased Areas." Art. XI (4), 55 Stat. Pt. 2, 1565.

The cumulative effect of these various provisions compels the conclusion that the areas are subject to fully as complete control by the United States as obtains in other areas long known as "possessions" of the United States.

Under Art. IV (1) the United States does not have "the absolute right" of jurisdiction over the offenses enumerated therein but only the absolute right "in the first instance" to assume and exercise jurisdiction with respect to such offenses. The jurisdiction over offenses conferred on the United States by Art. IV is a limited jurisdiction, and is not confined to the leased areas but in some aspects extends also to the whole Territory in which the base is situated. During the war the U. S. has been granted *exclusive* jurisdiction over offenses committed by members of its armed forces stationed in many foreign countries; likewise exemptions from immigration laws, permission to establish postal facilities, exemption from income and other taxes, have been or are enjoyed by members of the armed forces of the United States and other governmental personnel in many foreign countries without any suggestion that by the grant

of such rights and privileges the foreign sovereign concerned has surrendered its sovereignty or bargained away its possessions. The rights and privileges given to the U. S. by the Leased Bases Agreement of March 27, 1941, as well as the restrictions placed on the U. S. by the Agreement are regarded by the Department as the conditions of use and occupancy of the leased areas and do not seem to it to indicate that such areas are possessions of the United States.

The Department regards as unfortunate the conclusion of the Court that the U. S. exercises as complete control in the leased areas as in other areas long known as "possessions" of the U. S., and its specific reference in this connection to the Philippine Islands, Swains Island, Samoa, Guam and the guano islands over all of which the U. S. exercises sovereignty, except the Philippines over which sovereignty was exercised until they were given their independence on July 4, 1946, and except the guano islands, over which, in general, the U. S. exercises exclusive jurisdiction and no other nation claims sovereignty.

Any holding that the bases obtained from the Government of Great Britain on 99 year leases are "possessions" of the United States in a political sense would not in the Department's view be calculated to improve our relations with that Government. Moreover, such a holding might very well be detrimental to our relations with other foreign countries in which military bases are now held or in which they might in the future be sought. The Department is not clear that the Court has so decided in the case under reference, but it feels that the matter is not free from doubt and in view of the

possible implications that it should not be left in that state.

The arrangements under which the leased bases were acquired from Great Britain did not and were not intended to transfer sovereignty over the leased areas from Great Britain to the United States. The leased areas are to be held by the United States for the stated period for certain specified uses of a military nature, and the United States is not free to use them as it would its own property. This is evident from certain provisions of the Agreement of March 27, 1941. For instance, businesses cannot be established or professions practiced in the leased areas (Art. XVIII), nor can wireless stations be established or submarine cables landed except for military purposes (Art. XV), without the consent of the government of the Territory concerned, and commercial aircraft cannot operate from the bases without the consent of the Government of the United Kingdom (Art. XI). Furthermore, the United States cannot assign or underlet or part with the possession of the whole or any part of any leased area, or of any right, power or authority granted by the leases or the Agreement (Art. XXIII). The restrictions placed on use of the bases by the United States and the term of the lease are inconsistent with the conception of "possessions" of the United States as applied to the areas mentioned in the Court's opinion.

It may be of interest in connection with the foregoing to point out that the Act approved March 27, 1942 (56 Stat. 176), affords protection through the War Damage Corporation to property "situated in the United States (including the several states and the District of Columbia), the Philippine

Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States."

The Legislative history of the bill shows that during the debate in the House on March 2, 1942, Mr. Springer inquired what places were included in the final phrase "in such other places, etc." Mr. Dewey replied:

> As I recall—and I can be corrected by my colleagues if I don't state it correctly—that referred to Navy bases and Army bases under the control and jurisdiction of the United States wherein there may be private property connected with them.

None of Mr. Dewey's colleagues did in fact correct this statement in any way. (Congressional Record, Proceedings and Debates of the 77th Congress, Second Session (Paper Edition, temporary paging), 1907.)

It would therefore appear that Congress considered this phrase necessary in order to extend coverage under the War Damage Act to the leased bases, even though the phrase "territories and possessions" was also used.

It is hoped that the above views will be of assistance to the Attorney General in determining what further action should be taken with respect to the case under consideration.

Sincerely yours,

[s] Ernest A. Gross,

ERNEST A. GROSS,
The Legal Adviser.
(For the Secretary of State.)

APPENDIX B

1 *May 22, 1942*

Dear Mr. ——:

Your letter of January 14, 1942 inquires as to the applicability of the Fair Labor Standards Act to your employment as an accountant employed at the site of construction by a firm performing a Government contract at a United States Base being constructed in the British West Indies. I regret the delay in answering your letter.

The Act is limited in its operation to employees engaged in commerce or in the production of goods for commerce among the States, territories or possessions of the United States, or from any State, territory or possession of the United States to any outside place. Since the place at which you were engaged in your duties was not a territory or possession of the United States, the Act does not apply to your employment there.

Very truly yours,

[s] L. Metcalfe Walling,

L. METCALFE WALLING,

Administrator.

104201

---

2 *September 24, 1943.*

Dear Mr. ——:

This will reply to your letter of September 7, 1943 requesting an opinion as to whether the Fair Labor Standards Act applies to an employee employed by a contractor doing work for the United States Navy at Trinidad, British West Indies.

As you may know, in order for an employee to be entitled to the benefits of the Fair Labor Standards Act, he must be engaged in commerce or in the production of goods for commerce. "Commerce" is defined in section 3(b) as meaning "trade, commerce, transportation, transmission or communication among the several States or from any State to any place outside thereof." In section 3(c), "State" is defined as meaning "any State of the United States or the District of Columbia or any Territory or possession of the United States." Therefore, it is my opinion that the Act does not apply to work performed outside the territorial limits of the United States and its possessions irrespective of whether the employer is a corporation incorporated in one of the States of the union and the contract was made in New York State.

Very truly yours,

[s] William B. Grogan,
WILLIAM B. GROGAN,
Deputy Administrator.

451852
September 23, 1943

---

3 *October 21, 1942.*

Dear Mr. ——:

This will reply to your letter of October 19, 1942, in which you inquire whether an employee working as a storekeeper for a New York corporation doing Government work at the Trinidad base is entitled to overtime compensation for hours worked in excess of eight per day.

Under the Federal Eight-Hour Law laborers and

mechanics employed by a contractor on public work for the Federal Government are entitled to time and one-half for all hours worked in excess of eight hours per day. Although this Department has no authority to interpret this statute, I believe that a storekeeper would not be considered a laborer or mechanic within its meaning.

The Fair Labor Standards Act, providing that employees engaged in interstate commerce or in the production of goods for interstate commerce must be paid overtime at time and one-half their regular rate of pay for all hours in excess of 40 in a work-week, is limited in its application to States of the United States, the District of Columbia, or any territory or possession of the United States. The Trinidad base would not appear to be a "possession" of the United States.

I do not know of any other Federal labor laws which might be applicable to the situation presented by you.

Very truly yours,

[s] Irving J. Levy,
IRVING J. LEVY,
Acting Solicitor.

☆ U. S. GOVERNMENT PRINTING OFFICE 1948 807554 148